

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5809 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GHANSHYAMSINGH R RATHOD

Versus

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

Appearance:

MR RAJESH K DESAI for Petitioner
MS SANGEETA VISHIN for M/S TRIVEDI & GUPTA
for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/12/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner to the order of
the Chairman and Managing Director, GIDC, Ahmedabad,

dated 3.7.89. This order has been passed by that authority on appeal filed by petitioner against the order of the disciplinary authority. The disciplinary authority imposed the penalty of not permitting him to cross efficiency bar for five years and withholding of future promotion. However, later on, the disciplinary authority has taken its own order under review and the second penalty was deleted.

#. The appellate authority has given notice dated 28.11.88 to the petitioner to show cause as to why the penalty imposed by disciplinary authority should not be enhanced after hearing the petitioner. Under the impugned order, the penalty given by the disciplinary authority has been substituted by penalty of reversion of the petitioner from the post of Assistant to that of Clerk.

#. I find sufficient merits in the contention raised by learned counsel for the petitioner that the day on which the appellate authority had given notice to the petitioner for enhancement of penalty, he was not having that power. Reference in this respect has been made to Regulation No.45 of the G.I.D.C. (Staff) Regulations, 1963, which reads as under:

45. Disposal of appeals -- (1) In the case of an appeal the Appellate Authority shall consider whether, having regard to the circumstances of the case, the order appealed against is justified or not and shall confirm or revoke the order accordingly.

After going through this provision, I am satisfied that the appellate authority had no power to enhance the penalty given by the disciplinary authority in the appeal filed by the delinquent against the order of disciplinary authority. It is true that this Regulation has been subsequently amended with effect from 12.1.89, the date on which the amended Regulation was published in Gujarat Government Gazette. Now under this amended Regulation, the appellate authority has been conferred with the power to enhance the penalty but as on the date on which the notice was given in this case, this power was not with the appellate authority, the order passed and impugned in this special civil application cannot be allowed to stand. Accordingly this writ petition succeeds and the order dt.3.7.89, annexure-Q to the petition is quashed and set aside. Rule is made absolute accordingly. No order as to costs.

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(sunil)